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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**Agenda Item #26
Agenda ID #12527
RESOLUTION E-4624(Rev.2)
November 14, 2013**

R E S O L U T I O N

Resolution E-4624. PG&E-Sonoma Clean Power Authority Community Choice Aggregator Service Agreement.

PROPOSED OUTCOME: This Resolution approves the negotiated Community Choice Aggregator Service Agreement between Sonoma Clean Power Authority and Pacific Gas and Electric Company (PG&E) with modifications.

ESTIMATED COST: \$0

SAFETY IMPLICATIONS: This resolution approves a negotiated service agreement between PG&E and Sonoma. Under the negotiated service agreement PG&E will continue to deliver power purchased by Sonoma Clean Power Authority. Since PG&E is subject to all applicable safety rules, no incremental physical safety issues are associated with this Service Agreement.

By Advice Letter 4274-E filed on August 22, 2013.

SUMMARY

On August 22, 2013, Pacific Gas and Electric Company (PG&E) submitted Advice Letter (AL) 4274-E seeking approval of a non-standard Community Choice Aggregator (CCA) Service Agreement (Service Agreement) that PG&E negotiated with Sonoma Clean Power Authority (SCPA). This negotiated Service

Agreement is based upon the exemplary standard Utility CCA Service Agreement adopted in D.05-12-041 and embodied in PG&E's Electric Form 79-1029. This Resolution approves advice letter 4274-E. We find that the changes resulting from the negotiated Service Agreement will leave utility bundled customers no worse off. The negotiated Service Agreement, which we approve, does not change the standard service agreement provisions requiring PG&E to release customer-specific information to SCPA. We find that PG&E providing customer information to SCPA prior to mass enrollment does not conflict with Assembly Bill 117 or other applicable law and will not adversely affect the privacy rights of PG&E's customers, because the modifications to the Service Agreement leave the Commission approved non-disclosure rules intact.

BACKGROUND

The Standard Utility CCA Service Agreement drafted pursuant to D.05-12-041 is embodied in "Electric Form 79-1029" which is a Commission approved tariff form.

In 2002, the California Legislature approved Assembly Bill (AB) 117 (Stats. 2002, ch. 838 (Migden)), enabling cities and/or counties to implement CCA programs.

In D.04-12-046 and D.05-12-041, the Commission developed detailed rules for implementing CCA service. In D.05-12-041 and Resolution E-4013 (approving Advice Letter 2784-E-A), the Commission approved a standard Utility-CCA Service Agreement, to be executed prior to a CCA initiating service in order to address the obligations of the serving utility and the CCA. D.05-12-041 provided that the standard Service Agreement is exemplary and may be modified.

PG&E's standard CCA Service Agreement from D.05-12-041 is an approved tariff form, titled "Electric Form 79-1029."

Sonoma Clean Power Authority was registered with the Secretary of State as a CCA on December 17, 2012.

On July 25th, 2013 Sonoma Clean Power Authority, became authorized through Joint Powers Agreements as the CCA representing Sonoma county and the cities therein. On October 4, 2013, the Commission certified that it received the Implementation Plan for SCPA in accordance with Public Utilities Code, Section 366.2 (c).

PG&E and Sonoma Clean Power Authority agreed to modify the Standard Utility CCA Service Agreement.

Earlier in the year, SCPA approached PG&E to negotiate modifications to the standard Service Agreement Electric Form 79-1029. As a result of these discussions/negotiations, SCPA and PG&E reached an agreement on the terms for the negotiated Service Agreement. On August 22, 2013, PG&E filed Advice Letter 4274-E requesting Commission approval of the negotiated Service Agreement between PG&E and SCPA.

PG&E is seeking Commission approval and authorization of specific provisions modified from the Standard Service Agreement.

Modifications to various sections of the standard agreement are discussed below:

Section 4 - Events of Default and Remedy for Default: The standard agreement provides a framework under PG&E's tariff Rule 23 for defaults and breaches under the contract, and procedure for terminating the agreement. The changes are intended to highlight the applicable PG&E tariff (Rule 23) and to clarify the conditions for termination of the agreement. There are no substantive changes to the meaning or intent that result from modifications to the standard agreement.

Section 5 - Billing and Payments: The standard agreement provides a framework for billing services and payments under PG&E's tariff. The modifications to the standard agreement specifically highlight and clarify the limitations to offset costs and charges in accordance with PG&E Rule 23, parts SW.7 and T.2, bond or re-entry fee obligations, and other rights subsequently granted through CPUC orders issued after execution of the agreement. There are no changes to the meaning or intent that result from modifications to the standard agreement.

Section 15 - Dispute Resolution: This section provides a framework for resolving disputes under normal and exigent circumstances, which may require arbitration or Commission action. The modifications provided in Sections 15.1 and 15.2 of the negotiated agreement, with respect to dispute resolution and exigent circumstances provide expanded remedies for addressing substantial threats to irreparable economic or other harm. The changes that the negotiated service agreement make to the standard service agreement Section 15.1 and 15.2 are shown below in italics.

- a. 15.1 The form of this Agreement has been filed with and approved by the CPUC as part of PG&E's applicable tariffs. Except as provided in Section 15.2 and 15.3, any dispute arising between the Parties relating to interpretation of the provisions of this Agreement or to the performance of PG&E's obligations hereunder, including any alleged material breach that has not ripened into an Event of Default under Section 4 of this Agreement, shall be reduced to writing and referred to the Parties' representatives identified on Attachment A for resolution, with the responding Party filing its written response within thirty (30) business days after receiving the written position of the complaining party. Thereafter, the Parties shall be required to meet and confer within ten (10) business days in a good faith effort to resolve their dispute. Pending such resolution, the Parties shall continue to proceed diligently with the performance of their respective obligations under this Agreement, unless this Agreement has been terminated under Section 4.2. ~~If the Parties fail to reach an agreement within ten (10) additional business days of the last session to meet and confer, the matter shall, upon demand of either Party, be submitted to resolution~~

~~before the CPUC in accordance with the CPUC's rules, regulations and procedures applicable to resolution of such disputes.~~

- b. 15.2 ~~Except as provided in Section T.3 of PG&E's applicable community choice aggregation tariff (Rule 23), any dispute arising between the Parties relating to interpretation of the provisions of this Agreement or to the performance of the CCA's obligations hereunder shall be reduced to writing and referred to the Parties' representatives identified on Attachment A for resolution, with the responding Party filing its written response within thirty (30) business days after receiving the written position of the complaining party. Thereafter, the Parties shall be required to meet and confer within ten (10) business days in a good faith effort to resolve their dispute. Pending resolution, the Parties shall continue to proceed diligently with the performance of their respective obligations under this Agreement, unless this Agreement has been terminated under Section 4.2.~~ If the Parties fail to reach an agreement within ten (10) additional business days of the last session to meet and confer, the matter shall, upon demand of either Party, be submitted to resolution before the CPUC in accordance with the CPUC's rules, regulations and procedures applicable to resolution of such disputes, ~~as allowed by law or in equity,~~ or the ~~parties~~ Parties may mutually agree to pursue mediation or binding arbitration to resolve such issues. Notwithstanding the foregoing, in Exigent Circumstances (i.e., a failure by a Party to perform its obligations hereunder that poses a substantial threat of irreparable economic or other harm to the CCA, PG&E, or electric customers), either Party may seek an emergency order from the Commission in accordance with the CPUC's applicable rules, regulations and procedures. PG&E (without conceding that an Assigned Commissioner or an Administrative Law Judge have the authority to do so) and the CCA agree to comply with an interim order of an Assigned Commissioner (or of an Administrative Law Judge, in consultation with the Assigned Commissioner) assigned by the Commission to handle such a claim for emergency relief, but each retains all authority to challenge any such order. The CCA shall also comply with the requirements of Rule 23.T.3 regarding proceeding before the CPUC in Exigent Circumstances.

Section 15.3 deletes language that referred all disputes (with the exception of those described in Sections 15.1 and 15.2) to adhere to PG&E's tariff language concerning payment of fees, customer bills, current non-bypassable charges, and any other non-bypassable charges adopted by the commission. With the modifications, Section 15.4 becomes 15.3 and now

incorporates the language from the original Section 15.4 with clarification related to penalties and remedies available to each of the parties that arise from defaults or other breaches determined by the Commission. The substantive change in the agreement allows either party to seek action in court, for disputes not subject to commission jurisdiction.

- c. ~~15.3 Notwithstanding the provisions of Paragraph 15.1 and 15.2 above: (a) all disputes between the Parties relating to the payment by the CCA of any PG&E fees or Charges shall be subject to the provisions of PG&E's applicable tariffs governing disputes over customer bills; (b) all disputes between the Parties regarding nonbypassable charges (including Competition Transition Charges, Cost Responsibility Surcharges, and any other nonbypassable charges adopted by the Commission) payable by community choice aggregation customers or the CCA on behalf of such customers shall be subject to the provisions of PG&E's applicable tariffs; and (c) PG&E may pursue available remedies in law or equity for unauthorized electrical use by the CCA in a court of competent jurisdiction.~~ If the dispute involves a request for damages arising out of an Event of Default or other breach as determined by the Commission, parties understand that the Commission has no authority to award damages. To ~~resolvedetermine the amount of~~ such ~~issues~~damages, the parties may ~~mutually~~ agree to pursue mediation or binding arbitration ~~to resolve such issues, or if no such agreement is reached, to pursue , or either of them may bring action in a court of competent jurisdiction. Notwithstanding the foregoing, the Parties expressly agree and acknowledge that the Commission shall have the sole jurisdiction to adjudicate any claims (other than the amount of damages) in connection with the Agreement.~~

The new Section 15.4 seeks to prevent inclusion of claims unrelated to terms and conditions within this agreement. The changes in Section 15.3 and 15.4 are shown in italics below.

- d. ~~15.4 legal or equitable remedies that are available to the parties.~~This Section 15 shall not apply to any claims or actions that a party would be able to bring in the absence of this Agreement.

Section 22 - Audits: This section provides a framework for conducting audits to verify the accuracy of certain types of data. As per modified Section 22.1 (with respect to retention of customer transaction data), PG&E provides substantially expanded audit rights; SCPA provides for audit rights to PG&E as well. Changes to Section 22.1 of the negotiated Service Agreement are shown in italics below.

22.1: PG&E shall retain such specific records as may be required to support the accuracy of a) the meter data provided in PG&E's consolidated billings, (b) remittances of CCA customer payments to the CCA, and (c) charges for services provided by PG&E (collectively "Audit Matters"). When the CCA reasonably believes that errors related to metering or billing activity may have occurred, the CCA may request the production of such documents as may be required to verify the accuracy of such metering and consolidated billing. Such documents shall be provided within ten (10) business days of such request. In the event the CCA, upon review of such documents, continues to believe that PG&E's duty to accurately meter and provide consolidated billing for usage has been breached, the CCA may direct that an audit be conducted. The CCA shall designate their own employee representative or their contracted representative to audit PG&E's records.

NOTICE

Notice of AL 4274-E was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with General Order 96-B, Section IV.

PROTESTS

Advice Letter 4274-E has not been protested. PG&E states that it has been authorized to represent that SCPA supports approval of this Advice Letter.

DISCUSSION

This resolution approves, except as noted below, the negotiated Service Agreement filed via AL 4274-E because the proposed changes will not adversely affect PG&E bundled ratepayers or their privacy rights.

We approve modifications made by the negotiated service agreement in the following sections:

- a. Section 4 – Event of Default and Remedy for Default**
- b. Section 5 –Billing and Payment**
- c. Section 15 – Dispute Resolution;**
 - i. Section 15.3 – In the Event of Default**
 - ii. Section 15.4 – Inapplicability of Claims Absent from Agreement**

The Commission has reviewed the above Sections, revised by the negotiated service agreement, and approves them without modification.

We approve Sections 15.1 and 15.2 with the modifications as noted below.

These sections relate to dispute resolution resulting from either party’s failure to perform obligations or any alleged material breach which has not ripened into default.

The negotiated changes are generally consistent with the Commission’s protocols for dispute resolution, e.g., the time period for negotiating a remedy to the dispute, use of mediation, and making a motion before the Commission.

However, we are concerned that in Section 15.1, the negotiated settlement deletes the original language found in Form 79-1029, which reiterated that both PG&E and the CCA are required to perform their respective obligations under the agreement. In Section 15.2 additional clarification of the negotiated service

agreement is needed to clarify the part that addresses irreparable economic and other harm.

Section 15.1 should reflect that both PG&E and SCPA have responsibilities and options with regard to failure to perform their contractual obligations.

In order to reflect that both PG&E and SCPA have responsibilities and options with regard to failure to perform their contractual obligations, Section 15.1 should be amended to address the obligations of both PG&E and SCPA as italicized below:

The form of this Agreement has been filed with and approved by the CPUC as part of PG&E's applicable tariffs. Except as provided in Section 15.2 and 15.3, any dispute arising between the Parties relating to interpretation of the provisions of this Agreement, ~~or~~ to the performance of PG&E's *or the CCA's* obligations hereunder, including any alleged material breach that has not ripened into an Event of Default under Section 4 of this Agreement, shall be reduced to writing and referred to the Parties' representatives identified on Attachment A for resolution...

Section 15.2 requires a change in the negotiated service agreement to clarify that the section addresses irreparable economic and other harm.

In Section 15.2, the second sentence without the inclusion of the modifier "irreparable" repeated between "other harm" the sentence could mean "irreparable economic harm or other 'non-irreparable' harm." It is clear the remedies in exigent circumstances were meant to address irreparable economic and other irreparable harm. Therefore, the word "irreparable" should be inserted after the word 'other' as follows:

Notwithstanding the foregoing, in Exigent Circumstances (i.e., a failure by a Party to perform its obligations hereunder that poses a substantial threat of irreparable economic or other *irreparable* harm to the CCA, PG&E, or electric customers)...

We approve the additional language in Sections 22.1 relating to audit provisions because it will allow each party the ability to verify the accuracy of customer related data.

The modifications in Section 22 will (1) provide both PG&E and SCPA the ability to verify the accuracy of customer related data, such as meter data, remittance, opt-out request information and PG&E service charges and (2) allow the other party a fair opportunity to review related documents and conduct its own audit by appointing their own representative. The negotiated Service Agreement here satisfies the Commission's requirements for the protection of customer information.

The negotiated service agreement appropriately retains Section 11 of the standard service agreement and satisfies the Commission's requirements for the protection of customer information.

In the course of retaining and exchanging this information, PG&E and SCPA must comply with the non-disclosure provision already provided in the standard Service Agreement (Section 11) per the general guidance provided in D.04-12-046 which is excerpted below.

The CCA shall sign nondisclosure agreements for any confidential information that is not masked or aggregated. We will also require that all notices relevant to CCA programs inform customers that the utility may share customer information with the CCA and that the CCA may not use the utility's information for any purpose other than to facilitate provision of energy services. D.04-12-046, pp. 51-52.

The service agreement, nor any of the changes approved by this Resolution, minimize or otherwise alter PG&E's duties to comply with Commission Decisions, including but not limited to D.05-12-041, Ordering Paragraph #6.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding. None of the parties filed a protest to this advice letter. In order to expedite Commission's consideration of this resolution, both PG&E and SCPA stipulated to a shortened 5 day comment period. The comments on this resolution were due on November 4th, 2013. We received comments from PG&E by November 4th, 2013.

FINDINGS

1. D.05-12-041 adopted a standard Service Agreement with the understanding that it could be modified by the mutual agreement of the utility and the CCA in order to accommodate specific circumstances, subject to commission approval.
2. PG&E's Standard Form Service Agreement is an approved tariff - Electric Form 79-1029.
3. Sonoma County's Sonoma Clean Power Authority (SCPA's) is a registered Community Choice Aggregator (CCA).
4. Pursuant to D.05-12-041, Attachment A, PG&E filed Advice Letter 4274-E seeking approval of a negotiated CCA Service Agreement between PG&E and SCPA.
5. The negotiated Service Agreement filed in AL 4274-E has a term of service based on the earlier of a) the date the SCPA informs PG&E that it is no longer operating; b) the earlier termination pursuant to Section 4; or c) the effective date of a new SCPA Service Agreement between the parties.
6. The negotiated Service Agreement's modifications to Sections 4, 5, 15.3, 15.4, and 22 of the standard Service Agreement are reasonable because the modifications are in compliance with Commission rules approving service agreements.

7. The standard service agreement (Section 15.1) embodied in Form 79-1029, requires both PG&E and the CCA to perform their respective obligations. The negotiated service agreement does not refer to the CCA's obligations. Both the utility and the CCA must perform their respective obligations.
8. Section 15.2 should be revised to clarify that the remedies in exigent circumstances are limited to irreparable economic or other "irreparable" harm.
9. PG&E requests specific approval of Section 22 titled "Audits." It outlines a process that would allow both parties to verify the accuracy of CCA-related customer opt out data and to appoint a designated representative to audit records if either party deems it necessary.
10. The changes to Section 22 (Audits) are reasonable because they allow each party the ability to verify the accuracy of customer related data.
11. The negotiated service agreement appropriately retains Section 11 of the standard service agreement and satisfies the Commission's requirements for the protection of customer information.

THEREFORE IT IS ORDERED THAT:

1. Pacific Gas and Electric Company (PG&E) and the Sonoma Clean Power Authority's (SCPA's) negotiated Community Choice Aggregator (CCA) Service Agreement, as submitted in PG&E's Advice Letter 4274-E, is approved, subject to modifications in Sections 15.1 and 15.2 as noted below.
2. PG&E shall file a Tier 1 Advice Letter incorporating the modifications adopted herein to Sections 15.1 and 15.2 of the negotiated Service Agreement filed by PG&E.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on November 14, 2013 the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director